

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 124

Introduced by Senator ~~De León~~ Kehoe

January 26, 2011

An act to amend Sections 189, 12022.2, 16650, 16660, 30315, 30320, and 30325 of the Penal Code, relating to ammunition relating to the payment of claims against the state, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 124, as amended, ~~De León Kehoe. Ammunition. Claims against the state: appropriation.~~

Existing law authorizes a procedure for the payment of claims against the state.

This bill would appropriate \$1,422,000 to specified entities to pay for specified settlements of claims against the state.

Existing law, as amended by Proposition 115, adopted by the voters at the November 7, 1990, statewide general election provides that all murder which is perpetrated, among other means, by knowing use of ammunition designed primarily to penetrate metal or armor, is murder in the first degree. Proposition 115 may be amended by a bill passed by majority vote of the Legislature if that bill becomes operative upon approval of the voters.

This bill would delete the word “primarily” and recast that provision to provide that all murder which is perpetuated by knowing use of ammunition designed to penetrate metal or armor is murder in the first degree. The bill would also provide that this provision is operative upon

approval by the voters and directs the Secretary of State to place this provision on the ballot of the next statewide election.

Existing law provides that any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of 3, 4, or 10 years.

This bill would delete the word “primarily” and recast the above crime to be based on the immediate possession of ammunition for the firearm designed to penetrate metal or armor. The bill would further omit reference to ammunition primarily designed for use in a rifle and instead define “handgun ammunition designed to penetrate metal or armor” to mean ammunition, except a shotgun shell, capable of penetrating a body vest or body shield when discharged from a handgun.

Existing law defines “handgun ammunition” to mean ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles. Other provisions of existing law regulate the sale, transfer, delivery, and possession of handgun ammunition, and violations of certain of those provisions are crimes.

This bill would delete the phrase “principally” from that definition, and recast the definition of handgun ammunition to mean ammunition capable of being used in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles.

Existing law provides that “handgun ammunition designed primarily to penetrate metal or armor” means any ammunition, except a shotgun shell or ammunition primarily designed for use in a rifle, that is designed primarily to penetrate a body vest or body shield, and has either of 2 characteristics, one of which is that it is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, ammunition commonly known as “KTW ammunition,” to breach or penetrate a body vest or body shield when fired from a pistol, revolver, or other firearm capable of being concealed upon the person.

This bill would delete the word “primarily” and recast the above phrase to read “handgun ammunition designed to penetrate metal or armor” to mean any ammunition, except a shotgun shell, that is designed

to penetrate a body vest or body shield when discharged from a handgun and which has either of the 2 characteristics described above.

~~Existing law provides that any person, firm, or corporation who, within this state, knowingly possesses any handgun ammunition designed primarily to penetrate metal or armor is guilty of a public offense, with specified penalties.~~

~~This bill would delete the word “primarily” from those provisions and recast those provisions to be based on knowingly possessing handgun ammunition designed to penetrate metal or armor.~~

~~Existing law provides that any person, firm, or corporation who, within this state, manufactures, imports, sells, offers to sell, or knowingly transports any handgun ammunition designed primarily to penetrate metal or armor is guilty of a felony and upon conviction thereof shall be punished by imprisonment in state prison, or by a fine not to exceed \$5,000, or by both that fine and imprisonment.~~

~~This bill would delete the word “primarily” from those provisions and recast those provisions to be based on handgun ammunition designed to penetrate metal or armor.~~

~~Existing law authorizes the possession of handgun ammunition designed primarily to penetrate metal or armor by a person who found the ammunition, if that person is not otherwise prohibited from possessing firearms or ammunition, and the person is transporting the ammunition to law enforcement for disposition.~~

~~This bill would delete the word “primarily” from those provisions and recast those provisions to read handgun ammunition designed to penetrate metal or armor.~~

~~By expanding the definition of “handgun ammunition” and the definition of “handgun ammunition designed to penetrate metal or armor,” this bill would expand the scope of certain crimes relating to the sale, transfer, delivery, and possession of handgun ammunition, and thereby impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~^{yes}. Fiscal committee: yes. State-mandated local program: ~~yes~~^{no}.

The people of the State of California do enact as follows:

1 *SECTION 1. The sum of nine hundred ninety thousand dollars*
2 *(\$990,000) is hereby appropriated from the General Fund to the*
3 *Department of Justice to pay the settlement in Harris v. California*
4 *National Guard, Los Angeles County Superior Court No. BC*
5 *399229. Any funds appropriated in excess of the amount required*
6 *for the payment of this claim shall revert to the General Fund.*

7 *SEC. 2. The sum of four hundred thirty-two thousand dollars*
8 *(\$432,000) is hereby appropriated from the General Fund to the*
9 *Department of Education to pay the settlement in Parent Voices*
10 *et al. v. Jack O'Connell, Alameda County Superior Court No.*
11 *RG10544021. Any funds appropriated in excess of the amount*
12 *required for the payment of this claim shall revert to the General*
13 *Fund.*

14 ~~SECTION 1. Section 189 of the Penal Code, as amended by~~
15 ~~Section 51 of Chapter 178 of the Statutes of 2010, is amended to~~
16 ~~read:~~

17 ~~189. (a) All murder which is perpetrated by means of a~~
18 ~~destructive device or explosive, a weapon of mass destruction,~~
19 ~~knowing use of ammunition designed to penetrate metal or armor,~~
20 ~~poison, lying in wait, torture, or by any other kind of willful,~~
21 ~~deliberate, and premeditated killing, or which is committed in the~~
22 ~~perpetration of, or attempt to perpetrate, arson, rape, carjacking,~~
23 ~~robbery, burglary, mayhem, kidnapping, train wrecking, or any~~
24 ~~act punishable under Section 206, 286, 288, 288a, or 289, or any~~
25 ~~murder which is perpetrated by means of discharging a firearm~~
26 ~~from a motor vehicle, intentionally at another person outside of~~
27 ~~the vehicle with the intent to inflict death, is murder of the first~~
28 ~~degree. All other kinds of murders are of the second degree.~~

29 ~~(b) As used in this section, "destructive device" means any~~
30 ~~destructive device as defined in Section 16460, and "explosive"~~
31 ~~means any explosive as defined in Section 12000 of the Health~~
32 ~~and Safety Code.~~

33 ~~(c) As used in this section, "weapon of mass destruction" means~~
34 ~~any item defined in Section 11417.~~

35 ~~(d) To prove the killing was "deliberate and premeditated," it~~
36 ~~shall not be necessary to prove the defendant maturely and~~
37 ~~meaningfully reflected upon the gravity of his or her act.~~

1 ~~SEC. 2. Section 12022.2 of the Penal Code, as amended by~~
2 ~~Section 14 of Chapter 256 of the Statutes of 2010, is amended to~~
3 ~~read:~~

4 ~~12022.2. (a) Any person who, while armed with a firearm in~~
5 ~~the commission or attempted commission of any felony, has in his~~
6 ~~or her immediate possession ammunition for the firearm designed~~
7 ~~to penetrate metal or armor, shall upon conviction of that felony~~
8 ~~or attempted felony, in addition and consecutive to the punishment~~
9 ~~prescribed for the felony or attempted felony, be punished by an~~
10 ~~additional term of 3, 4, or 10 years. The court shall order the middle~~
11 ~~term unless there are circumstances in aggravation or mitigation.~~
12 ~~The court shall state the reasons for its enhancement choice on the~~
13 ~~record at the time of the sentence.~~

14 ~~(b) Any person who wears a body vest in the commission or~~
15 ~~attempted commission of a violent offense, as defined in~~
16 ~~subdivision (b) of Section 12021.1, shall, upon conviction of that~~
17 ~~felony or attempted felony, in addition and consecutive to the~~
18 ~~punishment prescribed for the felony or attempted felony of which~~
19 ~~he or she has been convicted, be punished by an additional term~~
20 ~~of one, two, or five years. The court shall order the middle term~~
21 ~~unless there are circumstances in aggravation or mitigation. The~~
22 ~~court shall state the reasons for its enhancement choice on the~~
23 ~~record at the time of the sentence.~~

24 ~~(c) As used in this section, “body vest” means any~~
25 ~~bullet-resistant material intended to provide ballistic and trauma~~
26 ~~protection for the wearer.~~

27 ~~(d) This section shall become operative on January 1, 2012.~~

28 ~~SEC. 3. Section 16650 of the Penal Code is amended to read:~~

29 ~~16650. (a) As used in this part, “handgun ammunition” means~~
30 ~~ammunition capable of being used in pistols, revolvers, and other~~
31 ~~firearms capable of being concealed upon the person;~~
32 ~~notwithstanding that the ammunition may also be used in some~~
33 ~~rifles.~~

34 ~~(b) As used in Section 30312 and in Article 3 (commencing~~
35 ~~with Section 30345) of Chapter 1 of Division 10 of Title 4,~~
36 ~~“handgun ammunition” does not include either of the following:~~

37 ~~(1) Ammunition designed and intended to be used in an antique~~
38 ~~firearm.~~

39 ~~(2) Blanks.~~

40 ~~SEC. 4. Section 16660 of the Penal Code is amended to read:~~

1 16660. As used in this part, “handgun ammunition designed
2 to penetrate metal or armor” means any ammunition, except a
3 shotgun shell, that is designed to penetrate a body vest or body
4 shield when discharged from a handgun, and has either of the
5 following characteristics:

6 (a) ~~Has projectile or projectile core constructed entirely,~~
7 ~~excluding the presence of traces of other substances, from one or~~
8 ~~a combination of tungsten alloys, steel, iron, brass, beryllium~~
9 ~~copper, or depleted uranium, or any equivalent material of similar~~
10 ~~density or hardness.~~

11 (b) ~~Is manufactured or designed, by virtue of its shape,~~
12 ~~cross-sectional density, or any coating applied thereto, including,~~
13 ~~but not limited to, ammunition commonly known as “KFW~~
14 ~~ammunition,” to breach or penetrate a body vest or body shield~~
15 ~~when fired from a pistol, revolver, or other firearm capable of~~
16 ~~being concealed upon the person.~~

17 SEC. 5. Section 30315 of the Penal Code is amended to read:

18 30315. Any person, firm, or corporation who, within this state
19 knowingly possesses any handgun ammunition designed to
20 penetrate metal or armor is guilty of a public offense and upon
21 conviction thereof shall be punished by imprisonment in the state
22 prison, or in the county jail for a term not to exceed one year, or
23 by a fine not to exceed five thousand dollars (\$5,000), or by both
24 that fine and imprisonment.

25 SEC. 6. Section 30320 of the Penal Code is amended to read:

26 30320. Any person, firm, or corporation who, within this state,
27 manufactures, imports, sells, offers to sell, or knowingly transports
28 any handgun ammunition designed to penetrate metal or armor is
29 guilty of a felony and upon conviction thereof shall be punished
30 by imprisonment in state prison, or by a fine not to exceed five
31 thousand dollars (\$5,000), or by both that fine and imprisonment.

32 SEC. 7. Section 30325 of the Penal Code is amended to read:

33 30325. Nothing in this article shall apply to or affect the
34 possession of handgun ammunition designed to penetrate metal
35 or armor by a person who found the ammunition, if that person is
36 not prohibited from possessing firearms or ammunition pursuant
37 to subdivision (a) of Section 30305, Chapter 2 (commencing with
38 Section 29800) or Chapter 3 (commencing with Section 29900)
39 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
40 and Institutions Code, and the person is transporting the

1 ammunition to a law enforcement agency for disposition according
2 to law.

3 ~~SEC. 8. Section 1 of this act shall only become operative if~~
4 ~~submitted to and adopted by the electors. The Secretary of State~~
5 ~~shall place Section 1 of this act on the ballot of the next statewide~~
6 ~~election.~~

7 ~~SEC. 9. No reimbursement is required by this act pursuant to~~
8 ~~Section 6 of Article XIII B of the California Constitution because~~
9 ~~the only costs that may be incurred by a local agency or school~~
10 ~~district will be incurred because this act creates a new crime or~~
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~
13 ~~the Government Code, or changes the definition of a crime within~~
14 ~~the meaning of Section 6 of Article XIII B of the California~~
15 ~~Constitution.~~